

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

24 HOUR FITNESS USA, INC., a California
corporation,

Plaintiff,

v.

BALLY TOTAL FITNESS HOLDING
CORP., a Delaware corporation, and
MICHAEL SHEEHAN, an individual,

Defendants.

Civil Action No. 08 cv 3853

Judge Joan Humphrey Lefkow

Magistrate Judge Morton Denlow

**PLAINTIFF'S MOTION FOR LEAVE
TO CONDUCT EXPEDITED DISCOVERY**

Plaintiff 24 Hour Fitness USA, Inc. ("24 Hour Fitness"), by and through its attorneys, hereby moves the Court pursuant to Rule 26 of the Federal Rules of Civil Procedure for an order permitting it to conduct expedited discovery necessary for a preliminary injunction hearing. In support hereof, 24 Hour Fitness states as follows:

1. This is an action for the threatened or actual misappropriation of trade secrets arising under the Illinois Trade Secrets Act, 765 ILCS 1065/1 *et seq.* and for breach of fiduciary duty.

2. A Motion for Preliminary Injunction has been filed, and expedited discovery is necessary and reasonable. *Vance v. Rumsfeld*, No. 06 C 6964, 2007 WL 4557812, at *5 (N.D. Ill. Dec. 21, 2007); *see also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. O'Connor*, 194 F.R.D. 618, 623 (N.D. Ill. 2000).

3. The expedited discovery Plaintiff requests is necessary due to the imminent harm posed by Defendant Sheehan's inevitable disclosure of the proprietary 24 Hour Fitness trade secrets and other confidential information as defined in Paragraph 10 of the Amended Complaint (hereinafter, the "proprietary 24 Hour Fitness trade secret and confidential information") to 24 Hour Fitness' direct, head-to-head competitor, Defendant Bally Total Fitness Holding Corp. ("Bally"). See *Pepsico v. Redmond*, 54 F.3d 1262, 1268 (7th Cir. 1995).

4. Plaintiff seeks only the expedited discovery that is narrowly tailored to marshal the evidence necessary for the preliminary injunction hearing.¹ Plaintiff requests leave of Court to propound the interrogatories and document requests to Sheehan and Bally attached as **EXHIBITS A-D** to the Memorandum in support hereof. Plaintiff also requests the opportunity to take depositions on an expedited basis of each Defendant and of certain other persons, including: Don Kornstein, Chairman of Bally's Board; Michael Feder, Bally's Interim Manager serving as Chief Operating Officer; John Wildman, Bally's Interim Chief Marketing Officer and Senior Vice President for sales; William G. Fannelli, Bally's Senior Vice President, Financial and Corporate Development; and the executive recruiter(s) used by Bally and/or Sheehan, identity to be determined.

5. Plaintiff respectfully requests that the Court issue all necessary orders on an expedited basis compelling Defendants to respond to the Plaintiff's discovery within 14 days of its issuance, that all depositions necessary for the preliminary injunction hearing be completed within 45 days after of the completion of written discovery, and that a date be set for a

¹ The Plaintiff will conduct merits discovery over the next several months after the preliminary injunction hearing and specifically reserves its right to a discovery schedule approved by this court following a Rule 26 scheduling conference and order.

preliminary injunction hearing as soon as possible after the completion of the expedited discovery.

6. Plaintiff anticipates that the preliminary injunction hearing in this matter will take 2-3 days to complete.

WHEREFORE, for all the foregoing reasons, and including the Memorandum in Support, Plaintiff 24 Hour Fitness USA, Inc. respectfully requests that this Court enter an Order allowing Plaintiff to conduct expedited discovery, and for such other and further relief that this court deems is just and proper in the circumstances.

* * *

Date: July 10, 2008

Respectfully submitted,

24 Hour Fitness USA, Inc.

/s/ R. Mark Halligan

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*Attorneys for Plaintiff 24 Hour Fitness USA,
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the attached **Notice of Motion, Motion For Leave to Conduct Expedited Discovery and Plaintiff's Memorandum in Support of its Motion for Leave to Conduct Expedited Discovery** to be served upon:

Alson D. Correll III
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ACorrell@KilpatrickStockton.com

via e-mail and U.S. Mail on this 10th day of July, 2008.

/s/ Deanna R. Swits
Deanna R. Swits